DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 04-0082
Indiana Individual Income Tax
For 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

I. Legitimacy of Assessment Document.

Authority: IC 6-8.1-5-1(a); 44 U.S.C.S. §§ 3501-3520; 44 U.S.C.S. § 3501(1); 5 C.F.R. § 1320.7 (1990).

Taxpayer maintains that the notice of proposed assessment is a "bootleg" document because it is unsigned and because the assessment notice does not have an "OMB" number.

II. Definition of Income.

Authority: Ind. Const. art X, § 8; IC 6-3-1-3.5 et seq.; IC 6-3-1-9; IC 6-3-1-12; IC 6-3-1-15; I.R.C. § 61; I.R.C. § 61(a); I.R.C. § 62; New York v. Graves, 300 U.S. 308 (1937); United States v. Supplee-Biddle Hardware Co., 265 U.S. 189 (1924); Doyle v. Mitchell, 247 U.S. 179 (1918); Stratton's Independence v. Hobert, 231 U.S. 399 (1913); Wilcox v. Commissioner of Internal Revenue, 848 F.2d 1007 (9th Cir. 1988); Coleman v. Commissioner of Internal Revenue, 791 F.2d 68 (7th Cir. 1986); United States v. Koliboski, 732 F.2d 1328 (7th Cir. 1984); United States v. Romero, 640 F.2d 1014 (9th Cir. 1981); United States v. Ballard, 535 F.2d 400 (8th Cir. 1976); United States v. Connor, 898 F.2d 942. 943 (3rd Cir. 1990) Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487 (Ind. Tax Ct. 2000); Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax. Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

Taxpayer argues that only corporate profits are subject to federal and state taxes. Because taxpayer is not a corporation, and did not receive corporate "income," taxpayer is of the opinion that he did not obtain taxable income.

STATEMENT OF FACTS

Taxpayers are Indiana residents who prepared and submitted a joint state tax return. For simplicity's sake, both parties are hereinafter simply referred to as "taxpayer." Except for the amount of money claimed as a refund, taxpayer filled out the return with "zeroes." The taxpayer's form was due on April 16, 2001.

On November 26, 2003, the Department of State Revenue (Department) sent taxpayer a notice of "Proposed Assessment" indicating that the Department had determined taxpayer owed additional state income tax. On January 18, 2004, taxpayer submitted a protest setting forth various arguments to the effect that taxpayer did not owe the tax. The protest was assigned to the Hearing Officer on February 27, 2004. However – despite repeated requests to do so – taxpayer declined the opportunity to take part in an administrative hearing in which taxpayer would have been provided the opportunity to explain the basis for taxpayer's protest. In addition, taxpayer declined the opportunity to submit additional written materials further explaining the basis for the protest.

Accordingly, this Letter of Findings has been written based upon the assertions contained within taxpayer's January 2004 protest letter. As best that could be discerned from the protest letter, taxpayer's arguments have been set out below.

DISCUSSION

I. Legitimacy of Assessment Document.

Taxpayer challenges the facial legitimacy of the November 2003 notice of "Proposed Assessment." It is taxpayer's contention that because the document does not have an OMB number, it is a "bootleg" document and that it is entitled to "simply ignore it." Taxpayer's reference is – presumably – to the Paperwork Reduction Act of 1980, 44 U.S.C.S. §§ 3501-3520, which was intended to "minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government." 44 U.S.C.S. § 3501(1). In implementing the statutory provision, the Office of Management and Budget, has promulgated regulations requiring that certain government numbers contain a control number. *See* 5 C.F.R. § 1320.7 (1990).

Taxpayer's complaint as to the absence of an OMB number is not well founded because neither the Paperwork Reduction Act nor the implementing regulations are applicable to documents prepared and issued by the state of Indiana.

Taxpayer also complains that the notice of proposed assessment is not signed. It is somewhat difficult to determine the specific nature of taxpayer's grievance. Although a personalized notice of proposed assessment might have certain advantages, there is nothing in the statutes or regulations which require that a notice of proposed assessment have a signature. It is sufficient that the document place the taxpayer on notice of a potential tax deficiency and that the taxpayer be provided with the means by which to challenge that assessment. The statutes simply states that, "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of unpaid tax on the basis of the best information available." IC 6-8.1-5-1(a).

Taxpayer's challenge as to the legitimacy of the November 2003 notice is entirely unfounded.

FINDING

Taxpayer's protest is denied.

II. Definition of Income.

Taxpayer argues that he did not receive "income" during the year 2000. Liberally construed, taxpayer's argument is that – for purposes of determining income tax liability – "income" can only be derivative of corporate activity. Therefore, as an individual Indiana resident who by definition did not receive "corporate" income, taxpayer is not subject to the adjusted gross income tax because the ordinary income received by individuals is not "taxable income."

Taxpayer has provided a number of Supreme Court cases which purportedly support taxpayer's basic contention. For example, taxpayer cites to Doyle v. Mitchell, 247 U.S. 179 (1918); Stratton's Independence v. Hobert, 231 U.S. 406 (1913) and United States v. Ballard, 535 F.2d 400 (8th Cir. 1976) – as supporting his contention that the individual income tax can only be assessed against corporate gain. Taxpayer predicates this conclusion on selected case citations which, when taken together, purportedly limits the definition of "taxable income" to the definition originally established under the Civil War Income Tax Act of 1867. However, setting aside the question of the validity of taxpayer's legal analysis, taxpayer's conclusion concerning the definition of corporate income tax is totally irrelevant.

Taxpayer's legal analysis stands for nothing more than, when read in isolation and selectively divorced from the factual setting under which the decisions were reached, a legal argument can be proposed which will support any legal conclusion no matter how fanciful that conclusion is. Taxpayer cites to cases in which the Court was asked to determine what constituted *corporate income* under the corporate income and excise taxes in effect at the time the Court reached its conclusion. To apply Supreme Court decisions limited to determining the efficacy and application of corporate income taxes to issues related to individual income tax may yield a certain desired result but the entire process is not legally, intellectually, or logically sound.

For example, taxpayer cites to United States v. Supplee-Biddle Hardware Co., 265 U.S. 189 (1924) as supporting the proposition that only corporations are subject to income tax. The issue in that case was whether or not life insurance proceeds received by a hardware company were subject to income tax. Id. at 193-94. The Supreme Court disagreed with the government's contention that the life insurance proceeds were taxable income holding that "It is reasonable that the purpose of [the Revenue Act of 1918] to exclude the proceeds of life insurance policies from taxation in the case of individuals should be given the same effect in adapting its application to corporations, and that such proceeds should be excluded whether by the direction of the insured they were to specially named beneficiaries or were to inure to the estate of the insured." Id. at 194. In the Supplee-Biddle case, the appellant won its argument; the hardware company did not have to pay income tax on life insurance proceeds. Id. However, there is nothing in this case – nor in the cited companion cases – which stand for the proposition that ordinary individuals are not subject to federal – or by extension – state income taxes.

Taxpayer cites to numerous cases each of which will not be addressed here. It is sufficient to say that the cases simply do not get the taxpayer where he wants to go. Nowhere in Supplee-Biddle or in any of the other cited cases, did the court find that individuals were not responsible for reporting their income and paying tax on that income.

The United States Supreme Court has clearly stated that the wages of individual citizens may be subjected to an adjusted gross income tax. In New York v. Graves, 300 U.S. 308 (1937), Justice Stone stated "That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized." Id. at 312.

Since that 1937 decision, the Federal courts have consistently, repeatedly, and without exception, determined that individual wages are income. United States v. Connor, 898 F.2d 942. 943 (3rd Cir. 1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income"); Wilcox v. Commissioner of Internal Revenue, 848 F.2d 1007, 1008 (9th Cir. 1988) ("First, wages are income."); Coleman v. Commissioner of Internal Revenue, 791 F.2d 68, 70 (7th Cir. 1986) ("Wages are income, and the tax on wages is constitutional."); United States v. Koliboski, 732 F.2d 1328, 1329 n. 1 (7th Cir. 1984) ("Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages – or salaries – are not taxable") (Emphasis in original); United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable. . . . [Taxpayer] seems to have been inspired by various tax protesting groups across the land who postulate weird and illogical theories of tax avoidance all to the detriment of the common weal [sic] and of themselves.").

In addressing the identical issue, the Indiana Tax Court has held that, "Common definition, an overwhelming body of case law by the United Sates Supreme Court and Federal circuit courts, and this Court's opinion . . . all support the conclusion that wages are income for purposes of Indiana's adjusted gross income tax." Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487, 491 (Ind. Tax Ct. 2000). *See also* Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

As set out in the Indiana Constitution, "The general assembly may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law." Ind. Const. art X, § 8. The Indiana General Assembly exercised its constitutional prerogative by imposing an adjusted gross income tax on individuals and corporations. IC 6-3-1-3.5 et seq. In doing so, the General Assembly defined an individual subject to the adjusted gross income tax as a "natural born person, whether married or unmarried, adult or minor." IC 6-3-1-9.

Taxpayer further argues that nowhere in the Internal Revenue Code is there a definition of "income." Taxpayer errs. I.R.C. § 61(a) states as follows:

> Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:
>
> (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
> (2) Gross income derived from business;
> (3) Gains derived from dealings in property;
> (4) Interest;
> (5) Rents;
> (6) Royalties;
> (7) Dividends;
> (8) Alimony and separate maintenance payments;
> (9) Annuities;
> (10) Income from life insurance and endowment contracts;
> (11) Pensions.

Under I.R.C. § 62, taxpayer begins calculating his adjusted gross income by starting with "gross income" as defined under I.R.C. § 61. According to his W2 forms, taxpayer apparently received ""wages, tips, other compensation" during 2000. Therefore, taxpayer must include those amounts as part of his reported "gross income." Taxpayer is then entitled to take whatever adjustments and deductions are available to him in determining the amount of adjusted gross income. Thereafter, the taxpayer is required to report the Federal adjusted gross income on his Indiana return and begin the process of calculating his Indiana tax liability.

Taxpayer is of the opinion that, with just the right combination of semantic technicalities, he can render himself immune from Federal and state tax liability. There is not one single Federal or state court case which supports such a far-fetched notion. Wishful thinking aside, given that taxpayer received gross income (I.R.C. § 61) in 2000, is an "individual" under IC 6-3-1-9, was a resident of Indiana for the year 2000 (IC 6-3-1-12), and is a "taxpayer" as defined within (IC 6-3-1-15), the statutes imposing the Indiana individual income tax apply with full force to taxpayer's income.

FINDING

Taxpayer's protest is denied.

DK/JM/MR – 042907